

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Stern's Garden Products, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Period 9/70, 9/71 & 9/72. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of January, 1980, he served the within notice of Decision by certified mail upon Stern's Garden Products, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stern's Garden Products, Inc.  
404 William St.  
Geneva, NY 14456

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
18th day of January, 1980.

Janne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Stern's Garden Products, Inc. :  
for Redetermination of a Deficiency or a Revision :  
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Corporation Franchise Tax :  
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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of January, 1980, he served the within notice of Decision by certified mail upon Joseph H. Murphy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph H. Murphy  
Hancock, Estabrook, Ryan, Shove & Hust  
One Mony Plaza  
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
18th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 18, 1980

Stern's Garden Products, Inc.  
404 William St.  
Geneva, NY 14456

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph H. Murphy  
Hancock, Estabrook, Ryan, Shove & Hust  
One Mony Plaza  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
STERN'S GARDEN PRODUCTS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Fiscal Years Ending	:	
September 30, 1970, September 30, 1971	:	
and September 30, 1972.	:	

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Petitioner, Stern's Garden Products, Inc., 404 Williams Street, Geneva, New York 14456, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ending September 30, 1970, September 30, 1971 and September 30, 1972 (File No. 13979).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on December 5, 1977 at 2:45 P.M. Petitioner appeared by Hancock, Estabrook, Ryan, Shove, and Hust (Joseph H. Murphy, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether petitioner has a place of business outside the State and is thus entitled to allocate part of its income outside the State.

FINDINGS OF FACT

1. On December 2, 1974, the commissioner of the Department of Taxation and Finance, Mario A. Procaccino, advised petitioner, Stern's Garden Products, Inc., by letter, that secondary claims for refund of corporation taxes for the fiscal years ending September 30, 1970, September 30, 1971 and September 30, 1972 were being denied on the grounds that a regular place of business outside

the State had not been established. Initial claims for certain refunds were allowed on January 15, 1974, prior to the full evaluation of the facts.

Petitioner, Stern's Garden Products, Inc., a corporation, was organized to manufacture and market Stern's Miracle-Gro, Stern's Miracid and several varieties of Miracle-Gro plant products. According to petitioner, Miracle-Gro and Miracid became the largest selling specialty garden fertilizers not only in the United States, but in the world. The manufacturing and marketing success of these products was attributable to the extent to which they were advertised and to their reliability features which were unrelated to the chemical composition of said products.

Petitioner's products were manufactured at its establishment in Geneva, New York. During the taxable years in question, it produced its products through six corporations unrelated to it, which were located throughout the United States. These plants were known as "formulators" and were located in New Jersey, Ohio, California, Pennsylvania and New York.

Once petitioner established a relationship with a formulator, the latter was provided with petitioner's formulae and was instructed exactly how to prepare petitioner's products, even to the point of being advised as to the supplier from which it could obtain the chemicals called for by the formulae. The formulators were given specific orders as to how to mix each product. In addition to directing the formulators in the daily production of its products, petitioner exercised strict quality and security control throughout production. Petitioner also supplied them with all of the packaging material needed to market its products, as well as with signs and display racks for its retailers and instructions for the home gardener. During each of the tax years in question, the formulators filled about two hundred thousand shipping cartons with petitioner's products, which amounted to between two and three million individual packages or units per year.

This meant that petitioner had to put about three million cannisters and fiber drums, in addition to shipping cartons, accessories and instructions, into the hands of its formulators each year. Since these were non-folding, non-collapsible cannisters and drums, and an empty package occupied as much space as a filled one, the storage space alone for these unused packaging materials was almost equal to that occupied by all of petitioner's products in the formulators' warehouses.

Manufacturing activities for petitioner's products started in July of the year before sales were to be made. By this time, the formulator had purchased most of the chemicals specified by petitioner. It also had much of the packaging material on hand. The formulator mixed the chemicals to the proper specifications and put them into the cannisters or drums. Following filling and sealing, these packages were packed in shipping cartons and stored in the formulator's warehouse facility to await shipping instructions.

Vast amounts of warehouse space were required to store petitioner's products, finished and unfinished. The monthly reports required to be made to petitioner's insurers indicate the value of finished and unfinished materials on hand in the various warehouses.

Petitioner received its orders at its sales headquarters and it would issue bills of lading to a formulator directing a shipment to a particular distributor. Trucking contracts were made in advance to pick up petitioner's products at the specified warehouse and deliver them to the consignee, the trucker being paid by petitioner. The distributor was billed directly by petitioner.

Petitioner paid its formulators for the cost of the chemicals, for putting them together, and for shipping them. Payment was made ten to thirty days after the cartons were closed and put in the warehouse. The charges

included labor, overhead and profit. There was no separate billing for any charges.

Petitioner had title to the property it shipped to its formulators, i.e., the cannisters, bags, cartons and spoons. Title to the plant food itself passed to petitioner after the chemicals were mixed to make it and then packaged. It was insured by petitioner on that basis.

Petitioner paid floor taxes to California on its products stored there and also paid franchise taxes to California because it maintained a physical inventory.

2. Petitioner, Stern's Garden Products, Inc., offered no documentary or other substantial evidence that it utilized public warehouses. Petitioner's Exhibit 4 is an invoice of goods received and specifically states that it is not a warehouse receipt and that it is not negotiable. The storage billed thereon was for one day (date received April 29, 1971 storage billed to April 30, 1971). Payment was to be made to the supplier.

3. In the attachment to the claims for credit or refund submitted by petitioner for the fiscal years ending September 30, 1970, September 30, 1971 and September 30, 1972, a statement declares that "no rent or handling is charged for any of these warehouses which are furnished by chemical manufacturing companies supplying our finished products." Enumerated thereon were three locations in New York State, two in New Jersey, and one each in Pennsylvania, Ohio and California.

4. The total to the finished products in the formulators' warehouses was in petitioner, to enable petitioner to have insurance coverage of said products, with the requirement that monthly inventories be filed with the insurance company. Petitioner's Exhibit 6 offered on March 1, 1978 subsequent to the hearing lists such inventories at the formulators' sites. A fire loss in Ohio

was fully indemnified by the Hartford Insurance Company in August of 1972.

CONCLUSIONS OF LAW

A. That section 210.3(a)(4) of the Tax Law, prior to its amendment effective January 1, 1978, provides, in part:

"...that if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent;"

B. That 20 NYCRR 4.11, which was effective prior to January 1, 1976, provided as follows:

"Regular Place of Business -- a. If the taxpayer did not have a regular place of business outside New York during the period covered by the report, its business allocation percentage is 100%; in other words, the taxpayer may not allocate any of its business income or capital outside New York.

b. A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer and, where as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is considered a regular place of business of the taxpayer. Where as a regular course of business a taxpayer, engaged in omnibus operations, uses a terminal, garage, repair shop, ticket office or any similar space under an agreement whereby it contributes to the cost of maintaining such facilities or furnishes similar facilities of its own in exchange therefor, such space is considered a regular place of business of the taxpayer. However, a taxpayer does not have a regular place of business solely by contracting for the sale of tickets by an independent contractor on a commission basis.

c. A taxpayer does not have a regular place of business outside the state solely by consigning goods to an independent factor outside the state for sale at the consignee's discretion."

C. That petitioner, Stern's Garden Products, Inc., did not have a bona fide office, factory, warehouse or other space which was regularly used by petitioner in carrying on its business and did not store its property in a public warehouse until shipped to customers. Also, in the regular course of



business, no raw material or partially finished goods were delivered to an independent contractor to be finished or improved; therefore, petitioner does not have a regular place of business outside the State and must allocate one hundred percent of its business income to New York State.

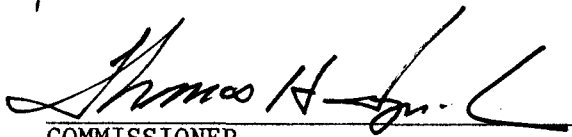
D. That the petition of Stern's Garden Products, Inc. is denied. The disallowance by Commissioner Procaccino of petitioner's claim for credit or refund of corporation tax paid for the fiscal years ending September 30, 1970, September 30, 1971 and September 30, 1972 is sustained.

DATED: Albany, New York

**JAN 18 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER